

APPEAL NO. 032502
FILED NOVEMBER 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter beginning November 29, 2002, and ending February 27, 2003, because the carrier waived its right to contest the claimant's entitlement to that quarter; that the claimant is not entitled to SIBs for the sixth quarter beginning February 28 and ending May 29, 2003; and that the claimant is not entitled to SIBs for the seventh quarter, beginning May 30 and ending August 28, 2003. The claimant appealed the determinations of nonentitlement, arguing that there was medical evidence which explained his total inability to work. The respondent (carrier) responded, urging affirmance. The determination that the carrier waived its right to contest the claimant's entitlement to the fifth quarter was not appealed and has become final. Section 410.169.

DECISION

Affirmed as reformed.

Both parties agree, on appeal, that the decision contains a typographical error. Finding of Fact 1.k. is corrected to reflect that the beginning date of the seventh quarter qualifying period was February 15, 2003, rather than February 14.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable injury on April 29, 1998; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the qualifying period for the fifth quarter was from August 17 through November 15, 2002; that the qualifying period for the sixth quarter was from November 16, 2002, through February 14, 2003; and that the qualifying period for the seventh quarter was from February 15 through May 16, 2003. At issue is the requirement of a good faith effort to obtain employment commensurate with the employee's ability to work pursuant to Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contended that he was entitled to SIBs for the quarters at issue because he had a total inability to work.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer specifically found that the claimant did not produce medical

narrative reports specifically explaining how the compensable injury causes a total inability to work and that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work during the qualifying periods in dispute. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer

The hearing officer's decision and order is affirmed as reformed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge